



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F11-01

MINISTRY OF FINANCE

Michael McEvoy, Adjudicator

January 5, 2011

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Summary: The applicant requested information relating to a specific *Taxation (Rural Area) Act* account number. The Ministry provided the applicant some information but withheld other information under s. 21(2) and s. 22(1) of FIPPA. The Ministry was required to withhold the disputed information under s. 21(2) of FIPPA because it was obtained for collecting a tax or determining tax liability under the *Taxation (Rural Area) Act* and none of the third parties involved consented to its disclosure.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 21(2) and (3).

Authorities Considered: **B.C.:** Order No. 22-1994, [1994] B.C.I.P.C.D. No. 25; Order No. 217-1998, [1998] B.C.I.P.C.D. No. 10; Order F05-29, [2005] B.C.I.P.C.D. No. 39.

1.0 INTRODUCTION

[1] This matter arises from the applicant's request of May 5, 2009 to the Ministry of Finance ("Ministry") under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") for information related to the "*Taxation (Rural Area) Act* Account No. 766 01378 060."

[2] The Ministry provided the applicant with a number of records but withheld information in some of them because it said disclosure of this information would be an unreasonable invasion of third-party privacy under s. 22(1) of FIPPA.

[3] The applicant wrote to the Office of the Information and Privacy Commissioner ("OIPC") on June 15, 2009 asking for a review of the Ministry's decision. When mediation did not resolve the matter, an inquiry was held under

Part 5 of FIPPA.¹ On October 14, 2010, one day before the parties' initial submissions were due, the Ministry wrote the OIPC to state that it also intended to rely on s. 21(2) of FIPPA as a basis for withholding the disputed information. Senior Adjudicator Francis allowed the Ministry to add s. 21(2) to its submissions on October 20, 2010.

2.0 ISSUES

[4] The matters in issue here are:

1. Whether the Ministry is required to withhold the requested information under s. 21(2) of FIPPA.
2. Whether the Ministry is required to withhold the requested information under s. 22(1) of FIPPA.

[5] Section 57(2) of FIPPA provides that the burden of proof falls on the applicant with respect to both issues.

3.0 DISCUSSION

[6] **3.1 Background**—The applicant is one of the registered owners of a rural property on Vancouver Island.² The Ministry sent him a computer-generated form letter requesting payment for taxes owing for the property.³ The applicant wrote back to the Ministry telling it to forward its request to five other individuals instead. He provided the Ministry with the names and addresses of those five individuals. Subsequently, the applicant requested, among other things, that the Ministry provide him with records showing any steps it took to contact the five individuals in question to collect the taxes owing.⁴

[7] **3.2 The Records in Dispute**—The records in dispute concern *Taxation (Rural Area) Act* Account No. 766 01378 060 and comprise:

- Correspondence between the Ministry and the five individuals referred to above, and
- Printouts from the Ministry's computer system documenting correspondence and steps taken by the Ministry to collect the taxes owing on the Vancouver Island property.

[8] **3.3 Arguments of Parties**—The applicant questions whether the Ministry is properly withholding any of the disputed records relating to the five named individuals or their addresses. He presumes this information is “part of

¹ A Notice of Inquiry was issued September 23, 2010 with final submissions received October 29, 2010.

² Ministry initial submission, para. 4.07. The applicant did not take issue with this.

³ Ministry initial submission, para. 4.07.

⁴ Ministry initial submission, para. 4.08.

the tax rolls otherwise available to the public.”⁵ The applicant also doubts whether disclosure of the information involves any personal information. This was the extent of the applicant’s initial submission and he did not provide a reply.

[9] The Ministry argues it gathered the disputed information to collect a tax under the *Taxation (Rural Area) Act*. The Ministry contends that s. 21(2) of FIPPA mandates it to refuse to disclose such information. It submits the only exception to s. 21(2) is where an involved third party consents to the disclosure of the information at issue under s. 21(3). The Ministry says there was no consent here.

[10] The Ministry also argues it must withhold the records under s. 22(1) of FIPPA because disclosing them would be an unreasonable invasion of third-party privacy. The Ministry submits the personal information is about identifiable individuals other than the applicant. It contends disclosure of the information is presumed to be an unreasonable invasion of third-party privacy under ss. 22(3)(e) and (f) of FIPPA because the information was obtained to collect a tax and describes third parties’ finances, assets or liabilities. The Ministry submits the only relevant circumstance is the confidential supply of the information. It notes that the *Taxation (Rural Area) Act* protects the confidentiality of records collected under that statute.

[11] **3.4 Analysis**—I will examine the s. 21 issues first. The relevant parts of s. 21 of FIPPA read as follows:

Disclosure harmful to business interests of a third party

21(2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure, or
- (b) the information is in a record that is in the custody or control of the archives of the government of British Columbia or the archives of a public body and that has been in existence for 50 or more years.

[12] The heading of s. 21 refers to “business interests of a third party.” Commissioner Flaherty found in Order No. 22-1994⁶ that reading the section in its entire context “suggests that the drafters were thinking about corporate and personal income tax returns.”⁷ He specifically determined in Order No. 217-1998⁸ that s. 21(2) captured tax information gathered under the *Taxation (Rural Area) Act*, also at issue in this case. Commissioner Loukidelis agreed with

⁵ Applicant’s initial submission.

⁶ [1994] B.C.I.P.C.D. No. 25.

⁷ At p. 12.

⁸ [1998] B.C.I.P.C.D. No. 10.

this finding in Order F05-29⁹ and specified that property taxes fell within the ambit of s. 21(2):

I agree that personal and corporate income tax falls within the meaning of a tax in s. 21(2) but not to the exclusion of property tax, which in my view also meets that description. Order No. 217-1998 and Investigation Report P98-11 confirm that Commissioner Flaherty also considered property tax to be a tax within the meaning of s. 21(2).

[13] I agree and adopt the above conclusions here.

[14] My review of the disputed correspondence and printouts identified at para. 7 above, reveals it is information obtained for collecting a tax or determining tax liability under the *Taxation (Rural Area) Act*. Specifically, property taxes are at issue here. I am unable to say more about records without disclosing their contents except that all refer to at least one of the five individuals referred to above. For these reasons, the records in dispute fall within the scope of s. 21(2).

[15] Section 21(3) of FIPPA provides that s. 21(2) does not apply if the third party consents to the disclosure. I consider the “third parties” to include individuals whose tax liability is under determination or who are the subject of a tax collection. In this case, there is no evidence that any of those persons referred to in the disputed records have consented to their disclosure. Therefore, s. 21(3) does not apply here.

[16] Given my conclusions, it is not necessary that I consider the issues raised by the Ministry concerning s. 22 of FIPPA.

4.0 CONCLUSION

[17] Under s. 58(2)(c) of FIPPA, I require the Ministry to refuse access under s. 21(2) of FIPPA to the records requested by the applicant.

January 5, 2011

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

OIPC File: F09-38764

⁹ [2005] B.C.I.P.C.D. No. 39.